

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

FRANK OLIVO and JANIE OLIVO

VS.

**WRIGHT NATIONAL FLOOD
INSURANCE COMPANY**

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C.A. NO. 1:16-CV-1002-LY

PLAINTIFFS' FIRST AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME **FRANK OLIVO** and **JANIE OLIVO**, Plaintiffs, complaining of **WRIGHT NATIONAL FLOOD INSURANCE COMPANY**, Defendant, and files this First Amended Original Complaint and in connection therewith would respectfully show the Court as follows:

PARTIES

1. Plaintiffs were at all relevant times residents of Hays County, Texas and are the owners of the insured property located at 1201 Barbara Drive, San Marcos, Texas 78666 and have been at all times material to the allegations set forth in this Complaint.

2. Defendant **WRIGHT NATIONAL FLOOD INSURANCE COMPANY** has appeared and answered herein.

JURISDICTION AND VENUE

3. This action arises under the National Flood Insurance Act, as amended, 82 Stat. 583, 42 U.S.C. Section 4001, *et seq.*, pursuant to the insurance contract issued to Plaintiff, providing flood insurance on Plaintiff's residence. This action, having arisen under an applicable

federal statute, namely, 42 U.S.C. Section 4072, requires the application of federal law pursuant to the general federal jurisdiction provisions of 28 U.S.C. Section 1331.

4. The insured property is situated in the Western District of Texas, Austin Division, and venue is proper in this Court pursuant to 42 U.S.C. Section 4072.

FACTUAL ALLEGATIONS - BREACH OF CONTRACT

5. Defendant issued an SFIP to the Plaintiffs, namely, Policy No. 421151199802 00, for a one (1) year period, whereby Defendant agreed to pay the Plaintiffs for any direct physical loss to the insured property caused by or from a "flood" as defined by the Policy. The SFIP covered flood damage to the Plaintiffs' residence and its contents to those limits set forth in the Policy subject to a deductible.

6. On or about May 25, 2015, a tremendous amount of rain fell in the San Marcos area causing widespread flooding throughout the area. The flooding directly and proximately caused severe damage to Plaintiffs' property which in turn has led to additional damages. Compliance with FEMA regulations and guidelines require an extensive remediation and rebuild of Plaintiffs' property so as to render any renovations or rebuild prior to this letter useless.

7. Plaintiffs timely notified the Defendant of their loss and the claim was adjusted by or on behalf of Defendant. As a result, Defendant denied full coverage and only made a partial payment for Plaintiffs' damages, which payment is insufficient to fully compensate Plaintiffs for their damages.

8. Plaintiffs disagree with Defendant's denial of and the adjustment of Plaintiffs' damages and losses and alleges that Plaintiffs have not been fully and appropriately compensated for the direct physical losses sustained as a result of the flood.

9. The above described SFIP was in full force and effect at the time of Plaintiffs' loss

and Plaintiffs have performed all conditions precedent entitling Plaintiffs to the coverage, payments, and benefits afforded by said Policy.

10. Defendant has failed or refused to pay the full amount due under the SFIP and has otherwise failed or refused to comply with the terms and provisions of the Policy. Accordingly, Defendant has breached the contract of insurance herein described.

11. As a direct and proximate consequence of the Defendant's breach of said contract, Plaintiffs have incurred the following damages: actual damages to the Insured Property to fully and completely remediate, repair, and rebuild Plaintiffs' property as required.

WHEREFORE, the Plaintiffs demand judgment against the Defendant for the amount due under the SFIP, costs and case expenses incurred in connection with the filing and prosecution of this action, and, any and all other appropriate relief to which Plaintiffs may be entitled.

Respectfully submitted,

**LAW OFFICES OF KEVIN R. MICHAELS,
P.C.**

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ATTORNEY-IN-CHARGE FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was filed electronically on this 9th day of November 2016. Additionally, parties may access this filing through the Court's system and notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Kevin R. Michaels
Kevin R. Michaels